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TRIAL

OF

JAMES STUART, Esq.

YOUNGER OF DUNEARN,

BEFORE THE

High Court of Justiciary,

ON

Monday the 10th day of June 1822.

FOR THE

MURDER

OF

SIR ALEXANDER BOSWELL,

OF AUCHINLECK, BART.

In a Duel,

ON THE 26th DAY OF MARCH LAST.

EDINBURGH:
PUBLISHED BY J. DICK & CO.
142, HIGH STREET,
AND SOLD BY ALL THE BOOKSELLERS.

T. Turnbull, Printer.

1822.

INTRODUCTION.

THERE does not occur in the annals of our country, the record of a trial which has excited so general an interest in the public mind, as the trial of Mr Stuart.—The origin of the dispute which terminated so fatally, it is well known, was of a political nature. The parties were public men, and the strenuous supporters of that side of politics which they severally had espoused.—As members of society, their characters stood high; and commanded the greatest respect in the circles in which they moved.

A literary Journal, (the SCOTSMAN) conducted with no common ability, and professedly attached to the Whig or Opposition interest, had for some time been established in this city; and the keenness with which it was sought for, and the extensive circulation it had consequently obtained, created so great an alarm in the minds of the leaders of the Tory or Ministerial party, that it was determined, in order to avert the consequences dreaded from the uncontroverted circulation of the principles it disseminated, to commence a publication decidedly supporting the other side of the question, which accordingly made its first appearance under the name of the BEACON, January 6. 1821. Unfortunately in opposing the doctrines promulgated in the Scotsman, the Beacon selected Mr James Gibson and Mr Stuart, whom they considered the leaders of the Whig Party, as fair objects of attack, and consequently its columns generally presented one or more anecdotes, holding them up to public censure or ridicule. This naturally gave these gentlemen great offence; and having obtained correct information who were the Proprietors of the Paper, they commenced Suits at Civil Law against them, for the injury done their characters. This exposure, (for the List of Proprietors included several of the first public characters, some of them in high official situations,) led to the discontinuance of the Beacon, which took place on the 24th day of September.

With the Beacon, however, the warfare did not terminate; as within a very short period, viz. Early in October last, a Journal, conducted upon the same principles, and avowedly for the same purpose, was commenced in Glasgow, under the

name of the SENTINEL, in which the attacks on M were not only more frequent, but more personal and To ascertain the authors of these libellous paragra no doubt very desirable by Mr Stuart; and an opp of doing this being given, through a schism which t among the partners of this concern, Mr Stuart avai self of it, and was put in possession of several of the Manuscripts, some of which were in the hand-writin Alexander Boswell.

In what manner Mr Stuart obtained these manus is unnecessary here to state, as this is fully detailed following account of the trial; but having obtained made repeated applications to Sir Alexander for sat for the injury, which becoming public, the part bound over by the Sheriff of Edinburgh, to keep t towards each other, within the limits of his juri This precautionary measure, however, did not put a the matter, and after it was found impossible to ad quarrel in any way satisfactory to Mr Stuart's h challenge was given by him, and accepted by Sir A Boswell, and they accordingly met at the place a mentioned in the Indictment, the former accomp the Earl of Rosslyn, as his Second, the latter by John Esq. of Lockerby.

As all the circumstances attending this fatal duel tailed in the evidence, it is unnecessary here to give the statements which appeared in the public print time.

LIST OF ASSIZE.

County of Edinburgh.

John Borthwick of Crookstone
John Pringle of Symington
Thomas Adinston of Carcant
William Pagan of Linburn
5 James Forrest of Commiston
John Wauchope of Edmonstone
Sir Alexander Charles Maitland Gibson of Cliftonhall, Bart.
Sir John Hope of Craigiehall, Bart.
James Watson of Saughton
10 George Reid of Rathobank
John Inglis of Auchindinny
James Haig of Lochrin
John Alexander Higgins of Neuk
John Thomson of Burnhouse.

Haddingtonshire.

15 William Hunter of Tynefield
John Anderson of Whitburgh
William Aitchison younger of Drummore
Hugh Turnbull of Branxton
James Balfour of Whittinghame.

County of Linlithgow.

20 Sir James Dalyell, Bart. of Binns
Gabriel Hamilton Dundas of Duddingstone
James Dundas of Dundas
Lieutenant-Colonel Andrew Gillon of Wallhouse
Alexander Learmonth of Crossflatts.

City of Edinburgh.

25 David Brown, clothier in Edinburgh
David Murray, spirit dealer there
Robert Paterson, ironmonger there
John Milne, ironmonger there
George Callum, tinsmith there
30 Adam Elder, Carver and gilder there
William Rodgers, haberdasher there
Andrew Kerr, upholsterer there
Patrick Crichton, coachmaker there
Robert Stevenson, engineer there
35 John Leitch, clothier there

John Hill, clothier there
James Scrimgeour, cabinet-maker there
Thomas Wilkie, cabinet-maker, Queen's Place.

Town of Leith.

Thomas MacRitchie, wine merchant in Leith
40 John Sommerville, tanner there
James Veitch, brewer there
James Allan, wine-merchant there
Matthew Smellie, writer there
Peter Latta Wilson, merchant there
45 William Telfer, merchant there.

GEO. FERGUSSON.
AD. GILLIES.
ARCH. CAMPBELL.

LIST OF WITNESSES.

1 James Earl of Rosslyn, now or lately residing at Dysart House, parish of Dysart, in the shire of Fife.
2 John Douglas of Lockerby, now or lately residing in Shandwick place of Edinburgh.
3 James Brougham, barrister at law, Lincoln's Inn Fields, London.
4 George Wood, Surgeon in Edinburgh.
5 Robert Liston, now or lately surgeon in Edinburgh.
6 James Brown Johnston, now or lately physician in Kirkcaldy, in the shire of Fife.
7 Dr John Thomson, professor of military surgery in Edinburgh.
8 Alexander Boswell, writer to the signet, now or lately residing in Edinburgh.
9 John Waugh Brougham, wine-merchant in Edinburgh.
10 Andrew Watt, now or lately farmer at Balbarton, in the parish of Kinghorn, and shire of Fife.
11 David Blair, now or lately apprentice to, and residing with Peter Moyes, smith at Baidler toll-bar, in the parish of Kinghorn and shire of Fife.
12 The said Peter Moyes.
13 William M'Kenzie, now or lately coachman to Claud Irvine Boswell lately one of the Senators of the college of Justice, and now or lately residing at Balmuto House, in the parish of Kinghorn, and shire of Fife.
14 Alexander Struthers, now or lately butler to the said Claud Irvine Boswell.

15 William Spalding, writer in Edinburgh, now or lately residing in Pitt Street, Edinburgh, and now or lately in the employment of Alexander Young, Roger Ayton, and Robert Rutherford, or one or other of them, writers to the signet in Edinburgh.

16 William Henderson, now or lately writer in Hamilton, in the county of Lanark.

17 Felix Dougharty, now or lately clerk of the said William Henderson, and now or lately residing in or near Hamilton aforesaid.

18 Louden Robertson, lately compositor in the Glasgow Sentinel Office, Nelson Street, Glasgow, and now or lately residing in Dundee.

19 Alexander Ure, now or lately writer in Glasgow.

20 William Bankhead, now or lately clerk of the said Alexander Ure.

21 Adam Duff, sheriff-depute of the shire of Edinburgh.

22 James Currie, now or lately clerk in the sheriff-clerk's office, Edinburgh.

23 Robert Bankhead, now or lately waiter in the Tontine Inn or Hotel of Glasgow.

24 William M'Comb, now or lately waiter or boots in the said Tontine Inn of Glasgow.

25 Robert Anderson, waiter, now or lately residing in Gallowgate of Glasgow.

26 William Scott, now or lately waiter in the Tontine Inn or Hotel of Glasgow.

27 Robert Alexander, now or lately editor and proprietor of the Glasgow Sentinel, Nelson Street, Glasgow.

28 David Alexander, now or lately clerk of the said Robert Alexander.

29 William Richardson, now or lately compositor in the Glasgow Sentinel Office, Nelson Street, Glasgow.

30 William Miller, now or lately in the employment of the said Robert Alexander in the Glasgow Sentinel Office, aforesaid.

31 John Wilson, now or lately compositor in the Glasgow Sentinel Office, aforesaid

32 Alexander M'Glashan, now or lately compositor in the Glasgow Sentinel Office aforesaid.

33 William Home Lizars, engraver, James's Square, Edinburgh.

34 Thomas Clerk, engraver, High Street, Edinburgh.

35 James Walker, tutor to Sir James Boswell, Bart. of Auchinleck, now or lately residing at Wellwood Lodge, parish of St Cuthberts, and county of Edinburgh.

36 Miss Janet Theresa Boswell, daughter of the deceased Sir Alexander Boswell of Auchinleck, Bart. now or lately residing at Wellwood Lodge aforesaid.

DUN. M'NEILL, *A. D.*

TRIAL

OF

JAMES STUART, ESQ.

THE uncommon interest of this Trial, it was anticipated, would, without some previous arrangement for the admission of the Members of Court and the Public, occasion very great confusion. To prevent this, it was determined that a certain portion of the Court Room should be appropriated for the accommodation of the Faculty of Advocates, and Writers to the Signet, and the remainder for the Gentlemen summoned on the Assize, and for the Public; and for this purpose the following notice was posted on the doors of the Court of Session on Friday last:

NOTICE,—The doors of the Justiciary Court are to be open for Jurymen and the Public at *Ten o'Clock* on Monday next, *and not sooner.*

The entrance through the Lobby of the Writers to the Signet to the Outer House will be opened at *Nine o'Clock* and *not sooner*, for the members of the Faculty, and Writers to the Signet.

The entrance from the Outer House into the Court Room, will be opened for the admission of the same persons, at *haly-past Nine and not sooner*, in order to their occupying their respective places.

Gowns are required to be worn.

June 7th 1822.

Notwithstanding the above notice, an immense crowd assembled at an early hour, and besieged every entrance to the Court; but the officers to whom the carrying into effect the above orders was entrusted, performed their duty so well, that the crush, although great, was attended with no accident. The Court, however, on the opening of the doors was immediately filled to excess.

Mr Stuart, with a view to the greater privacy, arrived at the Writers to the Signet's Hall, at half past nine o'clock in the morning, when he was admitted by the private door, and stopped in the Librarian's Room, till he entered the Court, accompanied by the Right Honourable the Earl of Moray, and Mr Erskine of Cardross, and a number of friends, who remained with him during the trial.—Mr Stuart was dressed in black, and looked remarkably well.

Exactly at ten o clock, the Judges took their seats upon the bench.—There were present:—

THE LORD JUSTICE CLERK,

LORD HERMAND, LORD GILLIES,
LORD PITMILLY. LORD SUCCOTH.

Lord Pitmilly left the Bench soon after the commencement of the Trial.

Lord Meadowbank did not take his Seat, as he had been called upon for his advice, and had therefore become a party.

Silence being proclaimed, the clerk of the court proceeded to read the indictment, as follows:

"JAMES STUART, Clerk to the Signet, lately residing in Charlotte Street of Edinburgh, you are Indicted and Accused at the instance of Sir WILLIAM RAE of St Catharines, Baronet, his Majesty's Advocate, for his Majesty's interest: THAT ALBEIT, by the laws of this and of every other well governed realm, MURDER is a crime of an heinous nature, and severely punishable: YET TRUE IT IS AND OF VERITY, that you the said James Steuart are guilty of the said crime, actor, or art and part: IN SO FAR AS, you the said James Stuart having conceived malice and ill-will against the late Sir Alexander Boswell of Auchinleck, Baronet, and having formed the unlawful design of challenging the said Sir Alexander Boswell, and others of the lieges, to fight a duel or duels, you did, about the 9th, or one or other of the days of March 1822, in order to enable you the better to accomplish your said unlawful design, repair to Glasgow to obtain, through the medium of William Murray Borthwick, formerly one of the proprietors or printers of the newspaper called the Glasgow Sentinel, and then a prisoner in the jail of Glasgow, the manuscripts of sundry articles which had been published in the said newspaper, and other papers and documents connected with said newspaper, which were then in the premises in Nelson Street of Glasgow, occupied by Robert Alexander, editor and proprietor of the said newspaper, and in the lawful possession and custody of the said Robert Alexander; and the said William Murray Borthwick having been liberated from jail, as arranged and concerted by or with you, and having, on the 11th, or one or other of the days of the said month of March, carried, or caused to be carried, away from the said premises in Nelson Street of Glasgow, sundry writings, the property, or in the

lawful possession of the said Robert Alexander; and having brought, or caused to be brought, the said writings to the Tontine Inn or Hotel in Glasgow, where you then was, you did thereby obtain access to the said writings: And having found, or pretended to have found among them, some writings holograph of the said Sir Alexander Boswell, you did wickedly and maliciously challenge the said Sir Alexander Boswell to fight a duel with you; and a time and place of meeting having been concerted, you did, upon Tuesday the 26th day of March 1822, or upon one or other of the days of that month, or of February immediately preceding, or of April immediately following upon the farm of Balbarton, in the shire of Fife, a little to the northward of the road from the village of Auchtertool to the Burgh of Kirkcaldy, and about three quarters of a mile or thereby distant from the said village of Auchtertool, in the said shire, wickedly and maliciously discharge at the said Sir Alexander Boswell a pistol loaded with ball, whereby the said Sir Alexander Boswell was mortally wounded, the ball having entered near the root of the neck on the right side, and shattered the collar bone, of which mortal wound the said Sir Alexander Boswell died in the course of the next day, and was thus murdered by you, the said James Stuart: And you the said James Stuart, conscious of your guilt in the premises, did abscond and flee from justice: And a letter, bearing to be dated 'Auchinleck, Nov. 7th 1821,' and to be subscribed 'Alexander Boswell;' as also a writing entitled 'Whig Song,' and addressed on the back, 'For Mr Alexander, Sentinel Office, Glasgow;' a letter or writing, bearing to be dated, 'Dumbarton, Dec. 17th 1821,' subscribed 'Ignotus;' and a writing entitled 'James Perry, Esq. late proprietor and editor of the Morning Chronicle,' and addressed on the back 'Mr Alexander, Sentinel Office, Glasgow, being all to be used in evidence against you at your trial, will be lodged in due time in the hands of the Clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same: AT LEAST, time and place above libelled, the said Sir Alexander Boswell was murdered; and you the said James Stuart are guilty thereof, actor, or art and part. ALL WHICH, or part thereof, being found proven by the verdict of an Assize, before the Lord Justice-General, the Lord Justice-Clerk, and Lords Commissioners of Justiciary, you the said James Stuart OUGHT to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

DUN. M'NEILL, *A. D.*

The Lord Justice Clerk then asked Mr Stuart whether, he was guilty or not guilty of the charge libelled, Answered, unhesitatingly,—NOT GUILTY, my Lord.

Mr COCKBURN now rose and addressed the Court in a very luminous speech. He said, it was not the intention of the Counsel for Mr Stuart to make any objection of a legal nature to the Indictment, as it was the earnest desire of that gentleman himself as well as of his counsel, that the Trial might proceed. He could not however omit taking notice of some expressions in the Indictment extremely hurtful to private feelings, and which appeared to him to have been very unnecessarily made use of. The Gentleman at the Bar was well known to the Public Prosecutor, and to all the Counsel for the Crown. The simple title of James Stuart Clerk to the Signet it was well known, was not the title he deserved. He was known to be the descendant of some of the noblest, and most ancient families of the kingdom. He was related to the Noble Families of Buchan, Erskine and Moray, to which last, in failure of male descendants from the last Earl, the father of Mr Stuart was presumptive heir to the honours of that ancient house. Mr Stuart was likewise known to have a right to the Title of James Stuart, Esq. Younger of Dunearn; and although he considered these errors as trivial, yet he thought they went to shew the mind and bearing of the Officers of the Crown towards Mr Stuart. He then commented upon the other parts of the Indictment, especially where it was stated that Mr Stuart, "having formed the unlawful design of challenging the said Sir A. Boswell of Auchinleck, Bart. and *others of the lieges to fight a duel or duels* &c." He averred that this was completely untrue, as Mr Stuart had never before or after thought of such a design. He refuted also the charge of malice against the deceased, as he should be able in the sequel to prove no such passion ever occupied his breast. He then adverted to the maliciously obtaining the manuscripts from Mr Borthwick for the purpose of challenging the deceased, but this he should prove not to have been the fact: And as to his absconding from his Country, he should produce the most incontestible evidence that this was false; for not only had Mr Stuart in the first instance refused to leave the country before the fate of Sir A. Boswell was known, although by the urgent solicitations of his friends he had been ultimately compelled to this step, yet he insisted that immediate notice be given to the Crown Agent, that he would be ready at a moment's call to appear for trial. The occasion of this fatal duel he ascribed, as was well known to political differences; and took notice of the way in which Mr Stuart had been attacked in the Beacon and Sentinel. He alluded to the share the deceased had taken in these attacks—that unfortunately he

possessed a gift, often a very fatal one, which gave him an uncommon facility of holding up his adversary to censure or to ridicule. This he had too successfully employed on the present occasion. With respect to Mr James Stuart, he should prove him to be of an unimpeachable character; and he affirmed that the rank which he held in society, forced him, as it did many others, to appeal to the laws of honour, when no other tribunal on earth could afford satisfaction. He adverted to the circumstance of his being supported at the bar, by a nobleman (the Earl of Moray) to whose family he was so nearly allied, and by another near relation descended from an ancient and noble family, Mr Erskine of Cardross. The former of these, who was entitled to a seat on the bench with their Lordships, had preferred to take his seat at the bar, in order to manifest the respect and affection he bore towards his relative. He said, there was no person within or without these walls, who would not press to bear evidence to the character of Mr Stuart; and he had often received the public thanks of the public bodies which he had served. He then entered into a detail of the circumstances which produced and which attended the Duel; but as all these are narrated in the evidence, it is unnecessary to dilate here, and said he would prove by the evidence every assertion he made, viz. That he gave every opportunity to Sir Alexander Boswell to avoid it, by merely asking him to deny the writing, or to make a very slight apology; but as he refused both, it could not be avoided, and this Sir Alexander confessed. He spoke of the noblemen and gentlemen who acted as friends on this occasion, as men possessed of the highest notions of honour,—and presented the strongest warrant that the Duel was fought most fairly. He then adverted to Sir Alexander's wish to fight on the Continent, which was that he thought it safer for him in case of any accident to his opponent; as he would not be subject to the laws of his country. England presented to him another obstacle, but having consulted a legal friend (an honourable judge of that Court,) who he, (Mr Cockburn) thought, most properly absented himself from his place on the bench, and being told by him, that he was much safer in the hands of the Lord Advocate of Scotland, than with an English grand jury, he adopted the resolution of fighting in this country. After adverting to Mr Stuart's conduct on the occasion, when he made every preparation as expecting to meet death, his feelings after the fatal encounter, and his readiness to meet his trial. He concluded with craving on behalf of his client, that he might be allowed to enter into his defence, by bringing forward such matter as was in his possession, though not contained in the indictment, as might prove what he had advanced.

Here some discussion took place, and it was agreed that such documents as did not appear upon the record would be considered in the proper part of the trial, but the Court agreed to strike out the words in the "indictment, and others of the lieges to fight a duel or duels:" thus confining the charge of the challenge of Sir Alexander Boswell alone.

The following were then named as the Jury:

Thomas Adinston of Carcant,
William Pagan of Linburn,
John Wauchope of Edmonstone,
Sir Alexander Charles Maitland Gibson of Clifton hall, Bart.
Sir John Hope of Craigichall, Bart.
James Watson of Saughton,
James Haig of Lochrin,
John Thomson of Burnhouse,
John Anderson of Whitburgh,
Sir James Dalyell, of Binns, Bart.
James Dundas of Dundas
David Brown, clothier in Edinburgh,
Robert Paterson, ironmonger there,
Thomas MacRitchie, wine-merchant in Leith,
William Telfer, merchant there.

The Lord Advocate then proceeded to call his witnesses.

First Witness.

Earl of Rosslyn.—Under the particular circumstances in my situation as a party, no privilege shall be used to prevent me from giving my evidence in a Court of Justice, nor answering any question put to me.

Was acquainted with Sir A. Boswell,—was charged with a message from Mr Stuart to Sir A. Boswell in March last. On the 25th of March last I saw Sir Alexander Boswell in consequence of a note requesting to see him, and stated to him, that I came at the desire of Mr Stuart; and that Mr Stuart was in possession of certain papers, some of which appeared to be in his hand-writing, and bore the post mark of Mauchline, and the post mark of Glasgow; they were addressed to the Editor of the Sentinel; some of them originals of papers published in Sentinel; one of them a Song, most offensive and most injurious to his character. Among these papers was a letter signed by Sir A. B. containing a Song and other papers reflecting on Mr Stuart—appeared to be in the hand-writing of Sir A. Boswell—be formed a strong presumption that the papers had been sent by Sir A. Boswell,

and Mr Stuart thought himself entitled to ask Sir A. B. whether or not he was the author? and at the same time, if Sir A. would say he was not the author, and had not sent them, such denial would be conclusive. Sir A. B. stated, that this was a subject of great delicacy, and that he wished to have a friend present, to which I acceded. Sir Alexander went away, and returned with Mr Douglas as his friend. I then stated what I had before said, taking all possible care to impress on Mr Douglas' mind, that what I had stated to Sir A. was strong presumptive evidence, that the papers were sent by Sir Alexander. Sir Alexander and Mr Douglas desired to confer together. I left them, and when called back, found Mr Douglas alone. He said he could not advise Sir Alexander to give any answer to the question. Mr Stuart was in possession of facts, and the evidence on which he relied, and must hereupon use his own judgment. If this unfortunate business was to proceed any farther, there were two conditions on which Sir Alexander Boswell had to insist upon.

First, That the meeting could not take place for sixteen days, as he had family matters to arrange, and, *Second*, If any meeting was to take place, it must be on the Continent. To these I did not hesitate to agree, on the part of Mr Stuart. He first declined to give the answers required. We then separated, and agreed to call on Mr Douglas at his own house. He had copies of the papers on which he was authorised to ask of Sir A. Boswell, the avowal or denial of his being the author; he considered the Song as the most offensive, as conveying a charge of cowardice. Here the papers were produced, which his Lordship identified. Saw Mr Stuart, and proceeded immediately to Mr Douglas, saying that he was grieved to find, that no alternative was left to Mr Stuart, that he agreed to both the conditions stated by Mr Douglas, and it was settled between Mr Douglas and myself, that as soon as it should be convenient for Sir Alexander Boswell to be in London, after settling his business, I should there hear either from him or he from me—I should advise Mr Stuart to have other business in London, and that I should be there myself, on or before the 6th of April. It was agreed, that as to place and time of meeting, that would be settled in London—Asked Mr Douglas if there was no possibility of avoiding by any means the fatal measure—whether it was possible that Sir Alexander should treat the song as a very bad joke on his part, and one for which he was sorry, and that he had no wish on his part to reflect on Mr Stuart's courage. The manner in which this proposition

was received, led me to understand that Mr Douglas had no hopes that Sir Alexander would say any such thing—Left Mr Douglas to go to Newhaven, in the conviction that every thing was for the present at an end;—was followed by Mr Douglas, who said that Sir Alexander had taken the advice of a legal friend—That it was no longer necessary to have the meeting put off—Stated that many circumstances made it appear to me desirable that our future arrangements should be settled in London as we had agreed—Stated also that Mr Stuart would set off for London, and that I would be there. Some discussion took place. Mr Douglas returned to Edinburgh—Stated that he would not go back to Edinburgh because that his return with him might excite observation. He then went home, all this occurred in one day. Was called upon next day by Mr James Brougham, who stated that in consequence Sir Alexander Boswell and Mr Stuart had had been bound over by the Sheriff of Edinburgh, to keep the peace; and in consequence of that proceeding, and the publicity the measure had obtained, that they should meet at Auchtertool, in Fife;—met Mr Douglas, and had some conversation near to Auchtertool, being a piece of ground in a field by the road-side, Mr Stuart and Sir Alexander arrived in carriages, and got to the place fixed on at 8 o'clock. The distance was measured by himself and Mr Douglas. Mr Douglas sitting down, and him standing up. Mr Douglas measured the powder for each, and the ball, and rammed them down.—These were two measures, of which Mr Douglas took one, and I took the other. The ground was then measured off 12 long paces. There was difference in the measurement, but they took the longest. The Pistols were delivered to the parties by Mr Douglas and himself, and it was agreed to fire together by a word. Mr Douglas put it on him to give the word, which he did. They both fired, and Sir Alexander fell. He received from all present every assistance, and ran Mr Brougham, who was at a little distance with his (Earl Rosslyn's) horse. Mr Stuart advanced with great anxiety and expressed the utmost concern at the event. At present assisted in removing Sir Alexander to Balmuto house, and no time was lost. Before any thing took place on the ground—Mr Stuart asked me if he should make a bow to Sir Alexander, I answered it was perfectly correct, and he advanced apparently for that purpose. Sir Alexander was then turning from him and, walking away; and I believe Mr Stuart, had lost the opportunity of doing so, but immediately my attention was drawn from Mr Stuart. Mr Wood,

Mr Liston, Dr Johnston of Kirkcaldy, were there. Previously there was a wish expressed by Mr Douglas and himself, that the matter might be amicably adjusted; but it was merely a wish as there was no hope of any such thing, after what had passed between Mr Douglas and Mr Brougham the day before; when every thing that could be offered on the part of Mr Stuart, was refused, he considered the matter as desperate.

(*By Mr Jeffrey.*) Has examined and compared all the papers, and was satisfied that the letter signed Ignotus, and the address of the song, were in the same hand-writing. With respect to the hand writing of the song at first view there appeared to be some difference, which appeared to be intentionally disguised; but upon farther examination, he believed it to be written by the same person. All had the post mark of Mauchline, and of Glasgow. Combining all that appeared on the face of those papers in his mind, entitled Mr Stuart to ask Sir Alexander Boswell, either to avow or deny his being the author. Neither Sir Alexander Boswell nor Mr Douglas required the exhibitions of these papers. When in putting the question to Sir Alexander, there was nothing in his manner of putting it, that could prevent answering the question, if Sir Alexander Boswell, had thought fit to do so. And that he took the greatest possible means in his power, to guard against any unfavourable interpretations, and he repeated twice the observation, that he would consider Sir Alexander's answer, as completely doing away the impression made by the discovery of the papers: Thinks there is no punctilio which could have prevented Sir Alexander from answering the questions: and as the friend of one, who he did not think the author, he would have advised him to answer it. Mr Douglas said, he was not certain that Sir Alexander was author of the Song. Mr Douglas was the first to hint at the probability of a meeting.—Did not think that during the whole of this business, he considered that Mr Stuart was actuated by ill will towards Sir Alexander Boswell, but by a deep sense of the necessity of vindicating his honour from the charge of cowardice. Mr Stuart was always reasonable, and ready to yield to every hint he gave him.—Has no difficulty in stating, that his conduct from first to last, was cool, composed, and such as might be expected from a man of constancy and courage. Mr Stuart said to him, when he gave him the pistol, and desired him to present his side, and not his front, I think I ought not to take an aim, to which I agreed. Both

parties asked if ready, and the words *present, fire*, were given as quick as they could follow each other: and the pistols were fired immediately on the word, *Fire*. Sir Alexander Boswell's pistol was the last, but the difference between them was scarcely apparent—Had no knowledge nor reason to believe, that Sir Alexander was to fire in the air. Such an intimation from Sir Alexander would have amounted to a declaration, that he did not mean to fight: and he would not have had any thing to do with an affair of that nature after such an intimation. His Lordship was then asked several questions respecting Mr Stuart's character and disposition, which were all answered favourably.

His Lordship after concluding his evidence sat upon the Bench during the remainder of the trial.

JOHN DOUGLAS, Esq. was acquainted with Sir Alexander Boswell, was present at a meeting with him on 25th March, and Lord Rosslyn, when he presented two papers saying, that he called upon a very unpleasant business; that these papers contained expressions very obnoxious to the character of Mr Stuart; one in particular, a song; that he had found a signed letter of Sir Alexander Boswell's, and making a comparison between the signed and the unsigned letters, he had no doubt they were by the same person, and he called to know whether they were his or not? that if he would say upon his honour they were not his, or if he confessed that they were his, and said he was sorry for it, and that he meant nothing serious against Mr Stuart's character, and make an apology, he would say nothing. Sir Alexander said, that any thing signed by him he would not pretend to deny; but any thing unsigned, he begged not to be asked any questions about. That was all that passed. Lord Rosslyn had retired, and it was on his return the foregoing answers were given. Lord Rosslyn said he would see his friend Mr Stuart, and report to him what had passed. Lord Rosslyn came to his house, and stated he had done so, and that he and Mr Stuart had reason to think the unsigned letters were his hand writing, and thus entitled to put the questions, or to ask for satisfaction. Sir Alexander authorised witness, as he anticipated what Mr Stuart would do, to accept the challenge if offered, and to require a fortnight in order to arrange his affairs; to which Lord Rosslyn assented. That the meeting should be on the continent, to which Lord Rosslyn also assented—no farther arrangements made at that time. Lord Rosslyn went for the purpose of going home. Shortly after saw Sir Alexander Boswell, when witness told him what had

passed, who said he wished he had seen him (witness) before he saw Lord Rosslyn. He then said he had taken the advice of a legal friend, who had made him alter his opinion as to the place of meeting, and that it should be in Scotland. Witness then followed Lord Rosslyn, and communicated this to him. Lord Rosslyn said he had seen Mr Stuart, and that the place being fixed for the Continent, he did not like to change it. He urged Lord Rosslyn to return and see Mr Stuart again, to know if he had any objections to the change. Lord Rosslyn would not—witness then called on Mr Stuart and apprised him of this, to which Mr Stuart replied, that he had no objections, but that he would wish to consult his Lordship. Witness communicated this to Sir Alexander, who said, that from the arrangements made, it might take place in a few days, and this witness communicated to Mr Stuart, who declined having any conversation with witness on the subject, but referred him to Mr Brougham, who was then in his house. With him the arrangements were completed. He was sent for to the royal hotel, by Mr Brougham, who informed him of the steps taken by the civil power, and proposed that if there was no objection, the meeting should take place the following morning, to which witness agreed. He then went to Sir Alexander, who was in bed. He at once agreed to this proposal. Witness then went to Mr Brougham, and stated to him that as Lord Rosslyn had been a party since the first, the meeting should be in Fife, as the easiest way of getting at him. Mr Brougham agreed to send an express to apprise his Lordship of this new arrangement. After making some arrangements, witness and Sir Alexander set out for Fife about five in the morning, and arrived at the village of Auchtertool about Ten o'clock. Witness then went to meet Lord Rosslyn, which he did about a quarter of a mile from the village, and advised him not to go into the village. but that he would return for the parties, and meet his Lordship at the toll bar, where he was to wait. He accordingly did so, and returned to the ground, which Lord Rosslyn and him examined—Said to Lord Rosslyn he hoped the affair might be accommodated; who answered he was afraid not. Measured off the ground with Lord Rosslyn, 12 paces, when the parties took their positions, and the seconds retired to one side. They were to fire by word of command.—Lord Rosslyn gave the word—Sir Alexander asked witness what he ought to do, who told him to follow his inclinations: that Sir Alexander said, he had no ill will to Mr Stuart, that in an unlucky moment he had put his life in jeopardy, and

that he was determined to fire in the air :—Witness expressed his approbation of this :—Was certain Mr. Stuart would not fall in the duel, from this determination of Sir Alexander :—Saw Mr James Stuart raise his pistol ; it was done very steadily, and with much firmness :—Heard the noise of two pistols go off distinctly. Surgeons were quite at hand. Concurred in the evidence of Lord Rosslyn, with respect to medical men. Sir Alexander Boswell after it was over, remarked to witness, that he was afraid he had not elevated his pistol sufficiently, to mark his intention to fire in the air. Said that Lord Rosslyn in the first meeting stated, that the Song was the most obnoxious of the papers : (by the Lord Advocate) Stated that nothing had been said to make him to believe that the papers were not in the same hand writing : never saw the originals of the papers. To a question, Whether if the Song was not in the hand writing of Sir Alexander Boswell ; he Mr Douglas, would have allowed any question to have been put to Sir Alexander about it, or him to answer it ? He said he would not. Sir Alexander allowed to witness, that he had injured Mr Stuart, by writing squibs against him. Being asked, to what he alluded as squibs, he stated, that Sir Alexander called upon him on Sunday the 24th of March, that he had arrived from London the night before, and found a card from Lord Rosslyn, wishing to let him know when he arrived, as he wished to see him on business, of the greatest importance, He stated that he conceived from this, he was to receive a challenge, and that he had no doubt it was from Mr Stuart ; that he understood there had been papers seized, connected with the Glasgow Sentinel, he was afraid they might have got hold of some of his papers, and he then mentioned there was a Song which he was afraid they had got, on which they might found their challenge. Sir Alexander then repeated the song, and he quoted the stanza on which he thought they could fix on ; and his object for calling on Witness was for him to act as his friend on the occasion—assigned as a reason for meeting on the Continent, in case of his hitting Mr Stuart he might be free from the laws of his country. On his returning from Newhaven from Lord Rosslyn, met Mr Stuart on his steps at No 2, N. Charlotte Street—stated that the occasion of changing the place of meeting from the Continent or England to Scotland, was the advice of his legal friend that he was as safe in Scotland, and that it would be safer to trust the Lord Advocate than an English Grand Jury.—Witness being asked who advised the parties to be carried before the

was to accompay him, and that it was at the request of Mr Borthwick—arrived at 10 o'clock.—Mr Henderson, and witness, went to jail,—Borthwick was incarcerated for debt,—Mr Henderson paid the Money, £50,—Witness is private agent for Mr Borthwick, it was arranged between him and Borthwick to go to the Sentinel Office, in consequence of a warrant from the Magistrates of Glasgow, reinstating him in his Office,—it was never mentioned before his liberation, that he was to go back to the Office,—Knew of the judgment in Borthwick's favour, before he left Edinburgh;—Was applied to two months before to act as Agent, and took the necessary steps for obtaining judgment in his favour. Mr Henderson and him consigned the money,—There was no particular reason stated why Mr Borthwick should be liberated at this particular time,—Mr Stuart called on him on Saturday, but assigned no reason for taking any concern in the matter, but Henderson expressed a wish to be introduced to Mr Stuart, when he was informed that Mr Borthwick would be relieved at Mr Stuart's instance, that he depended on Mr Borthwick, for putting him in possession of the authors of the papers, which appeared in the Sentinel, and then it would be for Mr Stuart to depart from the action he had brought against him.—There was nothing said about Mr Borthwick's going to take possession of the Sentinel Office. Borthwick went to the Tontine from the Jail, and met Mr Stuart—Thinks there was some conversation there respecting Borthwick's going to the Office. Mr Stuart soon left the room; he thinks it was subsequent to this conversation,—Mr Borthwick was to put witness in possession of the papers at the Tontine,—Borthwick was only to take so many of the papers as served to relieve him from the action raised,—He brought these Manuscripts on Monday morning, about 8 o'clock,—He did not bring them himself, one Robertson brought them,—Mr Stuart was present when they were brought,—Had no conversation with Mr Stuart about them previously that morning,—When brought, they were examined by Mr Stuart, Mr Henderson, and witness, Borthwick came there soon after, but did not assist in examining the manuscripts,—at that time, did not know the hand writing of Sir Alexander Boswell. Showed the Song and Ignotus, they were among those brought from the Sentinel Office, he gave them to Mr Stuart.

Cross Examined—Says he introduced Mr Henderson to Mr Stuart, they were not before acquainted; does not recollect whether Mr Henderson said Borthwick was desirous to give up papers to Mr Stuart to prevent the action raised against him from going on. Never heard Mr Stuart solicit any such thing—Knew Alexander and Borthwick as partners, and had not the smallest doubt but that Borthwick had a right to re-enter the

office in consequence of the decision of the magistrates—Borthwick was in jail for a debt not due—Knows that Borthwick was imprisoned to keep him out of the office. No part of the money paid, came either directly or indirectly from Mr Stuart—There was no mention of Sir Alexander Boswell's name in the presence of Mr Stuart, neither on the journey to Glasgow, nor in the course of the Sunday, and he did not know that Sir Alexander Boswell was implicated till the papers were examined on Monday morning, and on discovering his name in the manuscripts Mr Stuart said it was what he did not expect.

Here the case ends for the prosecution.

EXCULPATORY PROOF.

Mr Henderson, Writer, Hamilton,—Knew Mr Borthwick, was employed as his agent before, but latterly in the month of December last—Had papers put into his hands in December last, in order to get quit of an action of damages—Came to Edinburgh, and consulted a professional gentleman on this subject—Had no communication with Mr Stuart at this time—Did not know him till the beginning of the month of March, when he came for the purpose of getting Borthwick liberated from jail—He was imprisoned at the instance of James Robertson for £84, but restricted to £50,—He came to raise Bill of Suspension, as the debt was not due—Knew Borthwick had brought an action before the magistrates of Glasgow for the payment of bills, and for reinstating him in the office—Judgment was pronounced, ordering him to be paid certain bills, within the space of six days; failing this to put him in possession—Read petition and judgment in this case—Mr Borthwick took possession in consequence on the 1st day of March—Was apprehended for the alledged debt the same day,—kept in a messenger's house, and next day put in jail—Came to Edinburgh and applied to Mr Spalding, to raise a bill of Suspension, which they prepared together, but nothing further was done, as it was withdrawn, and it was expected an order for his liberation was to be granted without answers. He consigned the money from his own funds into the jailor's hands, under the expectation of being refunded from Borthwick's funds—Was first introduced to Mr Stuart on the 7th March, by Mr Spalding, in the outer house—And gave as his reasons for so, that Mr Borthwick wished to get rid of his action, and mentioned Borthwick's situation, and how he was imprisoned, and that his imprisonment was at the instigation of Alexander—Mr Stuart said he would make no promise to Mr Borthwick, but asked if he would give up the authors—Witness replied that he had no doubt he would as he asked him frequently to inform Mr Stuart that he would do this, if Mr Stuart would withdraw his action—Did not see Mr Stuart till the day they went to Glas-

gow—Mr Stuart, with Mr Roger Ayton, called at Mr Spaldings. Said nothing about Suspension—Saw Mr Stuart again in his own house. Mr Ayton accompanied him and Mr Spalding; before going there had agreed to withdraw the suspension, and to proceed to Glasgow—Mr Stuart said he would go with them—Mr Ayton said he would go also, but could not get away—Borthwick said, that if he resumed possession of the Office, he would take possession of the MSS. as he thought he had a right to them in order to get rid of the action—This he mentioned to Mr Stuart, who went for the purpose of seeing these manuscripts—Sir Alexander Boswell's name was never mentioned during the journey—Called at the jail but could not get admittance—Saw him next morning, when Borthwick said he would resume possession next morning at the usual hour—Said he had keys—Got him liberated on the Sunday—When imprisoned he desired him to send for his clerk to keep possession, which he declined—Borthwick got his liberty on the money being consigned—On the 1st March, Mr Borthwick sent some of the papers to witness at Hamilton—None of these shewed the name of Sir A. Boswell—Asked whether he had a right to take possession, which he said he certainly had—Alexander never made any complaint about the papers taken away on the 1st March—Mr Stuart left witness and Borthwick, &c. and went to bed—Mr Stuart never gave any instructions to Borthwick—Borthwick went to the office, with witness's clerk and Mr Robertson, to take possession of the Office—Sometime after Robertson returned with a parcel of papers, which turned out to be MSS. of the Sentinel—Borthwick returned saying that he was prevented from examining the papers in the office, by the violence of D. Alexander, his partner's brother—Examined the papers, and wished to return what he did not want; but this was said to be improper as he had been turned out by violence—These papers were resolved to be put in the hands of a Writer in Glasgow, to raise an action against Alexander, for the violence which was done that day.—These papers he said he believes to be the hand-writing of Sir Alexander Boswell,—some of the post marks were obliterated and some cut out—He stated that these post marks were Mauchline.—Mr Borthwick said they were from Sir Alexander Oswald, but if they looked into a letter, the right name would be found; which was done, and it turned out to be Sir Alexander Boswell. Mr Stuart on this discovery, said he never expected him to be the author. Said letters were put into Mr Spalding's possession, with strict injunctions not to part with them, but to shew them to any person who had any interest in them,—Never spoke to Mr Stuart about him paying the money, and he never offered to pay any,—Has no person bound to see him repaid the money.

James Gibson, Esq. Knows Mr Stuart, and Mr Ayton, writer, noticed a great many articles in Beacon and Sentinel offensive to himself, as well as Mr Stuart; had many conversations with Mr Ayton on the propriety of discovering the author of these libels. A most atrocious libel appeared against Mr Stuart in the first number of the Sentinel,—had a conversation on the 12th March, with Mr Ayton, in Mr Stuart's presence, when Mr Ayton informed witness, that Mr Borthwick had in his possession the manuscripts of these libels; Mr Stuart afterwards told witness, that Mr Borthwick had them not, as he was in prison, and had left them locked up in his desk.—Mr Stuart informed witness after this, that he had been waited upon by Mr Borthwick's agent, who said that Mr Borthwick was willing to deliver up all the MSS. if he would stop the action,—but Mr Stuart said he would make no promise till he had seen the MSS,—had heard that Borthwick was in the jail;—on next Saturday had some conversation with Mr Stuart respecting the bill of suspension,—Witness said it was a pity to temporise, as Alexander might find means to get possession of the papers; in the meantime, witness thought some one should go to Glasgow, pay the debt, liberate Borthwick, and get the papers,—and said he would much rather pay the debt himself, than lose this opportunity,—Understood that Borthwick had obtained a decree of the magistrates, to reinstate him in the Office—Never had a doubt as to Borthwick's right to be reinstated—His only cause for wishing to avoid delay was lest Alexander should destroy the papers, On Mr Stuart's return, he informed him he had seen the papers; and he was astonished to find Sir Alexander Boswell was the author of the libels against him. Mr Stuart had for many months conversed about the libels, but he never hinted that he suspected Sir A. Boswell. Mr Stuart compared the MSS with the libels themselves.—Mr Gibson had the Papers purchased regularly for him at the Office in Glasgow, and sent to him—Identified the copy produced containing the libel—Knows that this discovery led to a challenge by Mr Stuart on the evening of the 25th. Mr Stuart mentioned that the duel was to take place on the Thursday following—He was clear and collected, and did not appear to have any malice against Sir Alexander Boswell,—said he was placed in an unpappy situation, but he could not be relieved from it in any other way.—On next day at eleven o'clock, Mr Stuart's clerk called and delivered a sealed package, with a letter. The letter said, that as the matter was to be soon, if he was done for, that he would inter him four days, from that date, and no sooner. The packet was addressed to Mrs Stuart, which was returned to Mr Stuart.—Saw him immediately after the Duel, when he appeared in great agony, and said he believed Sir A. Boswell was mortally wounded.

ed. After some time he became more composed, and expressed a wish, that he had missed Sir A. Boswell—that he had [illegible] no aim, he wished he had, as he would certainly have [illegible] —Said that he had asked Lord Rosslyn if he should take [illegible] hat to Sir A. B., which his Lordship approving of, he [illegible] to do it; when Sir Alexander turned away his head—Witness advised Mr Stuart instantly to leave the country, as his remaining would only subject him to very unnecessary trouble—He wished not to go till he knew of Sir Alexander's fate, as he would be miserable. Witness still pressed him to depart, until at last he consented to go, on condition that Witness should give him instant information.—He had made no pecuniary preparations for travelling.—Mr Stuart would not depart till Witness promised to give notice that he was ready to stand trial.—Witness next morning saw Mr Alexander Duff, and gave him this notice verbally.—On March 27th—Received a note from Adam Rolland Esq. Crown Agent, wishing to know to whom he had given this notice. Witness in answer referred to a conversation with Mr Sheriff Duff.—Again early in April, Mr Gibson applied for Mr Stuart's Trial to come on, and received for answer, that it was not intended to raise any Indictment against a Criminal while he was not in custody.—Witness answered this letter by producing several instances, where gentlemen in England had been even tried for the like crime without even an indictment being raised against them, and that Mr Stuart would certainly appear when called to do so.

Mr Stuart did not abscond from Justice,—he never intended to be agent for Mr Stuart.—Has been long acquainted with Mr Stuart, in public and private business; and thinks him one of the best natured men, and not given to quarrel.—Never knew him to introduce politics to disturb private harmony.—Wrote Mr Rolland on the 18th of May on the subject of the trial.

These repeated solicitations were not only from the directions left by Mr Stuart, but from letters received from him while absent.

Robert Liston, Surgeon, was called upon the 9th March, at five in the morning.—Said he wished him to go to the country.—Did not tell the object till he had crossed the water, when he said he was to meet Sir A. Boswell.—Said there was no other course left him, that he had no enmity against Sir Alexander, and that he did not wish to hurt him.—Mentioned the circumstance of a duel, in which one party was wounded in the toe, and hoped he might only do the same;—employed himself at the inn in arranging papers which he put in a side board,—and thinks he put up some keys,—on the road to Auchterarder, gave witness a note for him to read, if he Mr Stuart should be hit,—

informing him what to do if he was wounded, and concluded, with hoping the affair might not be over bloody,—Went to Auchtertool with Mr Stuart, he appeared to be quite cool,—Saw them on the ground, but did not see them fire,—Examined Sir Alexander Boswell's wound, remained with him at Balmuto about a hour and a half, and then returned to town.

Thomas Alder, Esq. knows Mr Stuart,—Heard of the affair soon after it had happened,—Left London same day for France,—Heard Mr Stuart had gone the day before,—Made enquiry after him as soon as he arrived in France,—Witness went off to carry his passport, as he had gone off without it,—On meeting Mr Stuart, after giving him his paper, he asked what news witness brought, alluding as he conceived to Sir A. Boswell's. Witness said, very bad for him, adding he was dead—At this intelligence he burst into tears, and was much agitated—Witness remarked to him, that the affair was forced on him, he said, "true, but remember his wife and family." Witness was with him about a fortnight, during which Mr Stuart's mind often reverted to the subject, and was often absorbed in thought. Mr Stuart expressed always a desire to return, if his friends should allow him—While in Paris, received information that application was to be made to stop him, so went to the ambassador, and told him for what purpose he meant to be with him, and when he left Paris for Calais, he intimated this to the British ambassador, and the reason of his return to his native country.

John Clerk, Esq. knows Mr Stuart—Met him in London soon after this event—Saw him afterwards in Paris, and gave him the information, but not personally, of Sir Alexander Boswell's death—he appeared to be very much affected, and afterwards when he saw him in London, he still appeared to be much affected.

Robert M'Connochie.—Knows Sir Alexander Boswell—Shewn a letter which had been sent to him, as he understood, by Sir Alexander Boswell, and answered it as such—did not receive any other communication from Sir Alexander. The letter was read, setting forth that Mr Stuart had got possession of the papers, and that he must give him a meeting, stating it must be on the Continent, and requesting him to act as his friend on the occasion.

Doctor Coventry.—Knows Mr Stuart for 18 years, known him in public and private society, thinks him possessed of the best qualities, met him in companies and clubs, his behaviour very

insinuating, and always disposed to settle quarrels—Knew Sir Alexander Boswell for 20 years—Attended his lectures, knows his hand writing, shown 3 documents—Examined them minutely, and expressed an opinion that they were in his hand writing—Here Mr Jeffrey submitted to the Court the propriety of ascertaining whether the other papers furnished by Mr Borthwick, (but not mentioned in the indictment), were in his hand writing, which after some discussion was allowed—Dr Coventry was then shewn a manuscript, signed "Mark Tod,"—and another, entitled "The late Lieutenant Stuart"—Which he said were evidently in the hand writing of the deceased.

Charles Dalrymple, Gardiner. Lives in Kilmarnock, and in a Banking-house there. Was well acquainted with Sir Alexander Boswell, and knows well his hand writing. Letter signed "Ignotus," is in his hand-writing, and is the same hand-writing as the song. Did not at first think the song was his hand-writing, particularly the first part of it, but is sure of the last part. The address of the cover, enclosing the song, is in his hand-writing. Witness being shewn the letter signed, produced by defender, is in Sir Alexander's hand-writing.

Adam Duff, Esquire, sheriff depute of Edinburgh, being shewn certain papers said, they were the papers he had ordered to be produced by Mr Spalding and him.—The one marked, "Mark Tod," was one of those papers—They were in my custody under my seal, until I got them regularly from Mr Spalding, some days afterwards, and was examined as a witness, on Thursday last, to produce them; but I could not produce them, because on an application made by the Lord Advocate, they had been delivered in April last, to be used on Borthwick's trial at Glasgow, then expected to take place. Does not know where Mr Spalding got them. Remembers a rencounter between Mr Stuart, and a person of the name of Stevenson, and both were bound over by him, to keep the peace. Mr Stuart, came and complained of certain articles in the Beacon, and requested my interference; but I did not think them of such a character as to require it.

Mr Spalding, a former witness being again called in.—Went to Glasgow, and brought away some papers. Was afterwards examined before the Sheriff here, and forced to produce these letters; the one signed "Mark Tod," and the other, "The late Lieutenant James Stuart;" and thinks he gave the former at one time to Mr Stuart, who, he thinks, at one time saw them both.

George Bruce, Sheriff Officer,—Remembers being employed to bring Sir Alexander Boswell and Mr Stuart before the Sheriff, on 5th March,—went to Sir Alexander Boswell about

11 o'clock: Sir Alexander was surprised, on being informed that he must go before the Sheriff, and proposed that he should say he was not at home,—witness said that he could not do that. Sir Alexander Boswell said, that some of his friends must have informed the Sheriff of this, and that it was the worst thing they could have done, as he must go to the continent, and would not live in this country, and turned round, without saying any thing more, and walked before him to the Sheriff.

Lord Kinnidder,—Acquainted with Mr Stuart about 20 years, both professionally and privately,—During these 20 years, and in my lifetime, never knew a more perfectly good tempered and more amiable man, nor a safer companion Mr Stuart and I differ very decidedly in politics, but they never occasioned any disagreement or interruption to personal intercourse.—Recollect of Mr Stuart's name being omitted in commission of the peace for the County of Fife, and attended a meeting, when resolutions were entered into at Lord Moray's house, to apply to the Lord Lieutenant of the County, to have his name restored.

Dr R. Barclay,—Knows Mr Stuart for a number of years, resides within eight miles of him, and has seen him often, entertains the best opinion of him as a peaceable man, remembers Mr Stuarts name being struck off the commission for the peace, attended a very numerous meeting when resolutions for having it restored were unanimously adopted. The resolutions were here read, which witness said were the same as passed at this meeting.

D. Erskine of Cardross, is intimately acquainted with Mr Stuart, since his inf ncy, and has known him intimately ever since, gave him the highest Character for mildness of manners—Never heard him make an ill natured remark on any body in his life.

Mr Carnegie, west of Fife, has known Mr Stuart, for a long time, both in public and in private, always opposed him in politics, was agent for Captain Wemyss, in the election 1806, and Mr Stuart, for Mr Fergusson of Raith,—Gave him a most excellent character, for good temper—Knew him as Lieutenant in troop of Cavalry, was very attentive in his duties, never made a distinction for politics, never introduced them, but always prevented them from being introduced.

Mr. Walker, has known him for 30 years, never knew Mr Stuart, to allow political differences to interfere with private life.—Has had frequent communications with him, and was never given to quarrels but rather to make up than to foment disputes.

Walter Cook, W. S. has been acquainted intimately, with Mr Stuart for many years, and has often met with him in private and convivial parties, never agreed with him in politics—But this difference made no breach in their private friendship—Were rival candidates for a lucrative birth in the Society of W. S. Mr Stuart, carried on the contest with the utmost cordiality, and as Mr Stuart was the successful candidate, the issue rather increased than diminished, these private friendships—Never knew him given to quarrel.

Mr Mackenzie, knew Mr Stuart, for 30 years—Always considered him a good pleasant man, never given to quarrel, and although differing in politics it never disturbed their private intimacy.

Hay Donaldson, Esq. W. S.—Has been well acquainted with Mr Stuart for 30 years,—was partner with him 12 years, and during that time, has always commended him as of an excellent character, and does not remember him ever using an harsh expression towards any one if he spoke with him on politics, and though they differed on these subjects, never on his part was the discussion carried on with acrimony—And their separation as co-partners was effected on his part with the greatest temper and cordiality, and their intimacy has suffered no diminution.

Here the counsel for Mr Stuart, read to the Court and Jury, the articles from the Sentinel, mentioned in the indictment, with the additional articles, the first signed Mark Tolt, and the paragraph entitled Lieutenant Stewart,—for which, see Appendix.

The *Lord Advocate*, in a short distinct speech, stated, that he had considered it to be his bounden duty to bring this case to trial. He explained the import of the law of Scotland on the subject of duelling:—duelling was in noways sanctioned by our law, but, on the contrary, a deadly wound committed in a duel, however fair the duel might have been, constituted the crime of murder. In such cases, self-defence could not be urged as a defence against the charge. He concluded, by expressing his belief that the verdict of so respectable a Jury, would be agreeable to the dictates of their own consciences.

Mr Jeffrey made a very long argumentative speech—which at this hour of the morning (five o'clock,) it is impossible for us to attempt to report—He spoke for nearly three hours.

The Lord Justice Clerk commenced his charge to the Jury at three o'clock. A more distinct, candid and important charge, we venture to affirm, has seldom been heard within the walls of a criminal Court. The Jury had paid such devoted attention to the evidence before them, that the Lord Justice Clerk considered that it was not necessary for him to go over the details of it at

any great length. It was his bounden duty to state to them what the law of Scotland was in relation to such unfortunate matters as had come before them that day. But instead of stating the law in his own words, he should rather lay it before them in the words of our authors on Criminal Law; and the first to whom he would refer was, Sir Geo. Mackenzie, who lays it down as clear and decided law, that killing in a Duel is murder. He quoted several cases in support of this opinion.—The next author to whom he would refer the Jury was Mr Baron Hume, the standard authority of Criminal Law in Scotland: the most authoritative, as his work was composed from decisions, and the journals of the Criminal Courts. From the quotations read by the Lord Justice Clerk, it was clear that Mr Hume completely coincided with Sir G. Mackenzie. Mr Hume states, that in later times, some Juries had taken upon them to deliver verdicts of not guilty in such cases; but he clearly states that such decisions were not in conformity to the strict law of Scotland. Mr Burnet, also a valuable author, a man who was in considerable practice, and who had left behind him the treatise published since his death, expressed himself much to the same effect with the other authors. As these authors had referred to English authorities, the Lord Justice Clerk thought it right to read to them the opinion of the first authority in England, Judge Foster, whose opinion had been confirmed by the law Judges of England. The law, therefore, on such matters, he considered to be quite settled. Then, as to the case before them, the indictment accuses Mr Stuart of malice, and with that feeling, of having gone to Glasgow to procure papers from Borthwick, and thereafter to challenge Sir Alexander Boswell. Now there was not even an attempt to substantiate this part of the indictment. On the contrary, it appeared that Mr Stuart was utterly ignorant of who the author of the calumnies was, before he saw the papers in Glasgow. He could not therefore have gone to procure these papers under the feeling of malice or ill will to the unfortunate gentleman whose death had led to this discussion. The learned Judge quoted part of the evidence, which proved that Mr Stuart was ignorant of Sir Alexander's being the author, until the papers were shown to him—until then he had not even suspected Sir Alexander. But the next question was, after having procured those papers, did Mr Stuart premeditately and maliciously challenge and murder Sir Alexander? Now, the Jury would consider the whole circumstances of the case. The evidence, the clearest and most distinct he had ever heard in a court of law, was before the Jury, and by that they would perceive what had been the conduct, and what the steps taken by Mr Stuart. The Earl of Rosslyn spoke distinctly on the subject, and he was corroborated by the distinct testimony of Mr Douglas. Mr Stuart evinced no malice towards Sir Alexander throughout the whole course of the transaction. The Jury would also keep

distinctly in view the nature of the offers made by Mr Stuart—they were two—either that Sir Alexander should disclaim being the author of these papers, or that he should state that he was sorry for having composed these satires, by which he had not intended to hurt the character or wound the feelings of Mr Stuart. Sir Alexander unfortunately would not consent to either of these proposals. The Jury would keep in view Mr Stuart's conduct on the field, and his conduct after the fatal event—the contrition which he expressed for the fatal blow, and the total absence of all vindictive feeling on his part. In every case of this kind, where murder was charged, it was most material to consider the general character of the party accused—for that entered deeply into the case. Now in the whole course of his practice he never had heard higher, or more distinct and discriminate praise bestowed on any character. In good taste, the evidence on this part of the case consisted of gentlemen opponents to the prisoner in politics. One gentlemen had stated, that he never knew one who had more of the milk of human kindness. Another had been his acquaintance for twenty years, and during that period he never heard him utter an angry word. Mr Hay Donaldson, his late partner, a person well qualified to judge, had given a similar evidence. The learned judge begged it to be distinctly understood, that he, and he hoped no judge would be friendly to such measures as these, or ever give their countenance to the crime of duelling. He lamented, and the public groaned under the lamentable licentiousness of the press;—he hoped it would cease, it would receive no countenance from their Lordships. The Jury would weigh all these circumstances seriously in their minds, they would give a verdict consonant to the dictates of their own conscience, and if in this case they were unable to come to a decided and clear opinion, the advantage and privilege of that doubt belonged to the Gentleman at the Bar.

The Jury chose Sir John Hope, Bart. as their chancellor; and after consulting for a few minutes in the Jury-box, the chancellor delivered an unanimous verdict of—NOT GUILTY.

The verdict was received with loud cheers from without the doors, and with marked approbation from those within.

The trial lasted eighteen hours, and was not finished till near five in the morning.

Council for the Prosecution.

The Lord Advocate.
Solicitor General,
J. Hope, Esq.
D. M'Neill, Esq.
Robert Dundas, Esq.

Counsel for the Prisoner.

George Cranstoun, Esq.
Francis Jeffrey, Esq.
James Moncrieff, Esq.
John Moray, Esq.
Thomas Maitland, Esq.
William Gibson, Esq.

APPENDIX.

WHIG SONG.

Supposed to be written by one of the James's, certainly not by King James the I. or King James the V. but probably by one of the house of Stuart.

Tune,—"*Sheriff Muir.*"

There's some say that they're Whigs,
And some say that we're Whigs,
And some say there's nae Whigs ava man;
But ae thing I'm sure,
A pauky Whig do-er,
'S the Whig that out-whiggifies a' man.

Chorus.

And they crack and we tak,
And they tak and we crack,
And we tak and they crack awa,' man,

For *conscience* the *auld* Whigs,
Was *starlin'* and hauld Whigs,

And gi'ed their oppressors a claw man,
But *now* Whigs for *sillar*,
(Their calf on the pillar.)
Ken nought about conscience ava man.
And they crack and we tak, &c.

The diel took the lawyer,
And left the poor sawyer,
He was na a mouse to his paw man;

Oure straught was his mark man,
But a Whig Signet clerk man,
Can ony thing. ony way draw man.
And they crack and we tak, &c.

They rant about Freedom,
But when ye hae fee'd 'em,
Cry het or cry cauld, and they'll blaw man;
Tak him maist rampagant,
And mak him king's agent,
And hech! how his fury will fa' man?
And they crack and we tak, &c.

There's Stot Feeder Stuart,
Kent for that Fat Cow—art,
How gleegly he kicks ony ba' man;
And Gibson, lang chiel man,
Whase height might serve well man,
To read his ain name on a wa man.
And they crack and we tak, &c.

Your knights o' the pen man,
Are a' *gentlemen* man,
Ilk *body's* a *limb* o' the law man;
Tacks, bonds, precognitions,
Bills, wills, and petitions,
And *ought* but a *trigger* some draw man,
And they crack and we tak, &c.

Sae foul fa' Backbiters,
Wha rin down sic writers,
Wha fatten sae brave and sae braw man;
Ilk Whiggish believer,
Ilk privileged rieuer,
Come join in a hearty huzza man,
For they crack and we tak, &c.

TO THE EDITOR.

Dumbarton, Dec. 17th, 1821.

SIR—After the licence which we all have remarked in the paper devoted to what are called the Whigs, and which with becoming forbearance was suffered to pass with impunity, I regret to see by your paper, that the vindictive spirit of that party has been directed to an article in your paper, and that you are thereby invited to partake of that luxurious boon of the legislature—a Jury Court Trial.

Much has been said about personality, but something may

yet be said. If you had been base enough to pry into the *private life of* any *private* individual, and had dragged the result of unworthy research before the public, there are not words adequate to express the reprobation which such conduct must have merited. Of this, however, I need not say that I acquit you, for no one accuses you, and I feel confident that you are incapable of so reprehensible an act.

But while, by the concurrent admission of all men, those who press forward as public men, or notorious men, subject themselves to public animadversion, your error must be in the choice of your subject, and that may be serious or trivial.

You are prosecuted it seems by Mr James Stuart of Dunearn, once, certainly, a private individual, but a man now known to us, because he has bustled out of his element. If, therefore, you had held up to public ridicule Mr James Stuart as an itinerant orator from county to county and from meeting to meeting, who could have blamed you? Every *public performer* subjects himself to criticism—orators as well as players. Orator Hunt has had it, why should not Orator Stuart? Orator Hunt after threatening to thrash the *lesser* man, Mr Morley of the British Hotel, showed, in the cant language, the white feather, and *refused to fight him*, and was deservedly stigmatized and laughed at. If Mr Stuart had done this, the parallel would have been perfect.

But, Sir, you are dragged before this purse-squeezing Jury Court, I am told, because in reliance on the much advocated liberty of the press, and looking to the practice of the Whig papers, and particularly that pure jewel the Scotsman, you have ventured to repeat, what I am also told must have been well known to Mr James Stuart, was as currently the topic of general conversation in Edinburgh as any subject which interests the many, either from its gravity or its absurdity. If I am not misinformed, and if utterance is publication, he might have selected from coffee-houses, or clubs, some individual whose *dimensions* might have been unobjectionable, (if other circumstances might also be equally so,) and on that chosen individual, by judicious management, might have rubbed himself again into brilliancy. But he has judged otherwise, and has selected you, Mr Sentinel, for his Whiggish vengeance, and summons you to lists where the winner gains no *honour*, and the loser though he may lose much, may earn no *disgrace*. Beaten at their own weapons, like discomfited bullies, they are the first to call the watch, and without inquiry as to the provocation or who struck the first blow, he who struck the blow *that is noticed* must go before his worship.

I approve of the determined stand which you have made against Whig and radical tyranny over the Press; and if, without injuring your proud spirit, I may express regret, I must lament the annoyance and expense to which you are subjected, for that which did not originate with you, for you have simply echoed the general talk. As you have stood boldly forward on loyal principles, I feel confident that this law-suit will not damp your energies, that your own courage will bear you through, and that your cause will be supported by many a good friend against the virulence of a party. I beg leave to offer as one stud for a sevenfold shield against Whig assaults, my hearty subscription of five pounds; and I shall be glad to hear that there is a goodly increase before a week is over, I am,

Sir,

Your constant Reader,
IGNOTUS.

JAMES PERRY, Esq.

Late Proprietor and Editor of the Morning Chronicle.

It has been our painful duty, in common with our fellow-journalists, to announce the death of a man, who, for so long a period, had so distinguished a share in the political paper warfare of the country. "A generous Briton wars not with the dead." With Mr Perry as a private individual who could war? The keenness of invective was confined to his journal, for in private life he acknowledged no distinctions of party; and, so late as the year 1820, the writer of this article, whose political opinions were as much in opposition to those of Mr Perry as the two poles are to each other, passed a happy day at his hospitable table, in company with Lord Erskine, who is characterized as one of his earliest friends, and the most sensative *politicometer* could not have indicated one hostile atom of influence. With Mr Perry's early history, we have no concern, farther than to remark that his own prosperous career gives a satisfactory confutation of many of the histrionic declamations which he poured forth against the order of things in this peculiar country. A man of liberal sentiments, and who has ample means for hospitality, always can command good company in London; and Mr Perry had the requisites and the result. He was admitted into the first society, he was an enthusiastic, although not a very skilful critic in the fine arts, particularly on music, which occupied many an amusing corner in his journal. He was what is called a collector, and had acquired a very pretty

These pursuits, and the company with which he ed, gave a gentlemanly tone to his newspaper, unless rom ill health or occasional absence, too much was left nack subordinates.

in lamenting the death of an amiable man and a ce- d journalist, we have also to lament the death of the ng Chronicle. The Morning Chronicle will no doubt continued, but no longer under his control,—and the of his responsibility and character. Scarcely, indeed, ceased to breathe, when the untrammelled subordinate, e acting master, gives the taste of future progress. In y article on the death of this able journalist, the jour- n scribe poisons the cup dedicated to his memory with owing observation, which we will not so far dishonour mory of Mr Perry, who was what is called a Consti- l Whig, as to believe that *he* would have permitted to in *his* Morning Chronicle. Alluding to the period of ench Revolution, this *new* Chronicle observes, " It en that broke forth that unfortunate schism in the party, which has had so fatal an effect on the character House of Commons, and which, by destroying its ef- as a controul over the servants of the crown, has down the main bulwark of our old constitution, *and is to be feared, to the people, no other hope but in them-* " If this does not give a proper savour of unblush- licalism we are no judge of symptoms. But this only es our regret for the loss of Mr Perry, who raised and ed the character of his paper, for now under the in- of his long exertions, any low scribbler, for a while, tain currency for the vilest sentiments and most repre- e revolutionary doctrines.

TO THE EDITOR OF THE SENTINEL.

Edinburgh, January 25th 1822.

—The Whig Festival and Radical Rally took place here ht, no less a person than the " conqering hero," Sir Ronald son, M. P. for KIRKALDY, in the Chair. They told me, that 60 gentleman sat down to dinner, but I presume they unted near the witching hour of night, when two eyes are as four. Amongst the GENTLEMEN, however, I remark- peculiar friend the magnanimous MR JAMES STUART, as not HE who gave " the Liberty of the press." The the GENTLEMEN were, in general, decently clothed; when I had time to observe it, dissipated the alarm and n with which I pressed through the crowd, one hand on

my watch chain and the other on my pocket, repenting most heartily of my idle curiosity.

The Gallant General, as they called him, first, very modestly expressed his inability to perform that duty which he had deliberately undertaken, or "to do justice to the situation in which he found himself placed;" but this unlucky discovery did not put him out of the chair, or his speech, for in an extraordinary oration, he recommended union to prevent ruin, but amongst whom I could not learn. A very shrewd dark looking man significantly hinted, that it was a guarded allusion to United Scotsmen. Sir Ronald, however, concluded by giving very decently, without any wink or indication, "The King." After a toast or two, "The Conquering Chairman," next proceeded to eulogise the public principles and private character of Mr Fox; the latter, at least, I thought rather ticklish ground, but the Whigs cheered, and all was right, for I am no connoiseur in Whig morality; so "The memory of Charles James Fox," was ordered to be washed in solemn silence: "Little said soonest mended," (thought I,) and swallowed my wine. I forgot, however, to mention that the Conquering General, not finding enough, I fancy, to say for the old dead Whig, jumbled in some devilish severe hits against the present ministers, and told us that he (the Conqueror) condemned them. So all is over with them.

The Gallant Conqueror next touched up Parliamentary Representation pretty sharply, but made no allusion to Kirkaldy, which you will admit was handsome on his part. He then gave, (and he spoke English like any cockney who has lived in London all his life.) "A fair, free, and fool representation in Parliament," and the fiddles struck up "Tullochgorum." *The conquering General and gallant Chairman* concluded what he found to be his allotted portion of the toast, by giving the health of one, on whom the country should turn their eyes in the hour of danger. "Earl Grey," and the waggish cat-gut tormentors struck up the Pretender's song, of "Charlie is my darling." I thought this Noble Lord had become quiet, but after this hint we must keep a sharp eye upon him.

Down sat the reviewing General, and up rose the reviewing Lord Rector, Mr Jeffrey, who in more words than a less glib gentleman could have pressed into the service on such a subject, gave "Sir Ronald Ferguson," and the band, as previously instructed, played "The conquering Hero!" The conquering Hero returned unblushing thanks, and with a battle-door report, sent back the compliment by proposing the health of "Our Excellent Croupier, Mr Jeffrey." (Great Applause.) The Croupier's cup was in excellent motion, and he was up in a moment, and was all modesty and gratitude.

Then we had in strange succession, toasts, and speeches, and healths, and memories, too many to remember, till the dull

series was relieved by a speech from Mr Cranstoun, which I regret he did not deliver in Greek as was originally intended. It would have been more appropriate to Grecian liberty than a harangue upon modern Greeks, in a modern language. I don't think he alluded to the number of *slaves* in ancient Athens, but that perhaps was properly omitted: he concluded by giving for a toast, "The re-establishment of the independence of Greece;" this was most heroically received, but passed without a Tune, as the fiddlers had no Greek music furnished;—*one* of them, who is celebrated for the facility of punning with his fiddlestick, and who slyly coupled Earl Grey with the Pretender, proposed to play the Tallow Chandler's Song, "On melting day when grease is boiling," but it was deemed Personal to several respected Whigs, and an extinguisher was put upon what Tom Moore calls "the light of the song."

Charles Fox's name and memory is a very convenient excuse for all subjects whatsoever; and as all Whigs are men of *talent*, we had, as one Doctor Maclagan who sat near me very aptly observed, a very copious discharge of oratory. My next neighbour, on the right, whom I suspected to be a weaver from the manner he expressed his joy, by the alternate fling of either arm, and the successive kicks with either heel, assured me that there were three *dozen* of prime toasts given, and short, and long, five *dozen* of speeches. Many of the toasts you will see in the papers. The army and navy were given, but not another *fighting* man (unless you will allow the Director of Chancery, my Lord Rosslyn, who was remembered when toasts began to run dry,) until the gallant and "excellent Croupier," whom Lord Byron has celebrated for some bold exploit with Anacreon Moore, (the seconds no doubt singing the beautiful air of "Fly not yet.") arose and gave the health of Mr James Stuart! Mr James acknowledged in grateful terms, the honour which he had received from such a quarter. So now he has a feather to stick in his cap, to bear the other company.

Imagine my gratification to be seated at so small an expense, at an elegant dinner, amidst a galaxy of talent; and my mouth scarcely well closed upon my morsel of cheese, again wide expanded for a morceau of eloquence. After all, although I am no judge, I think these men of talent very meddling sort of bodies. It is not perhaps becoming in one such as me, to doubt the assurances which we have from themselves. But if you could convince me that they may possibly be mistaken; and, if thus relieved from the weight of such authority, I am asked my opinion, why I must give it honestly, and say that I never was present at such a scene of humbug, fulsome flattery, and foul vituperation, in the whole course of my life. Such an olio of vulgarity and impertinence, with an occasional pepper-corn of genius, I have never before been partaker of. Low must that

party be sunk, that could not meet under more respectable auspices than Sir Roland Fergusson; and where such a set were permitted to be prominent. Talents! "behold there arose a talent of lead." There are a few men of common place genius amongst them, there are also a few smart men of literary slang. But duller fellows than the bulk of those who had the effrontery to presume to talk, must alone be sought for amidst the swamps of Old Batavia.

I am, SIR, your obedient humble servant.

MARK TOD.

It is a remarkable fact, that the following supposed to be from the same pen as the Whig Song, was published in the Sentinel, the very day Sir Alexander Boswell died:—

THE BULLY'S LAMENT;

A popular new Anglo-Scottish Medly, written by a Celebrated Pickpocket in Edinburgh jail, and set to music by Saunders Your, a low itinerant fiddler in Glasgow.

(TUNE, "*See the Ship*," &c.)

See the coach at the door is waiting,
Black eyed Phelex I go from thee;
See the scrolls from my pocket peeping,
Nabbed so slyly all for me.

Should my heroes be sent to limbo,
In the cause of the S———t *brave*;
Do (Your) your utmost to befriend them,
The thief, the traitor, and the slave.

(TUNE, *Scots wha hae*," &c.)

Knaves wha hae wi' *Haggart* bled,
Thieves whom jails hae often fed,
Triumph in the daring trade,
Of burglary for me!

Now's the day, and now the hour,
The morning clouds begin to lour,
Up, up the stairs like *freemen* pour,
Spite of chains and pillory!

Wha for I——k—th—g's king,
Tory papers would na bring,
Though to-morrow he should swing,
On the gallows tree?

Wha would be a *coward* knave?
Wha would fill a traitor's grave?
Wha sae base as be a slave?
But those who can *make* free.

(TUNE, "*Where are you going*," &c.)

Where are you going the coachman said?
Where are you going the coachman said?
We are going to Air-dree, as fast as we can flee,
This gemmen and I my coachmen lad.

And what hae you been doing the coachman said?
And what hae you been doing the coachman said?
We've been ha rying the nest of a hornet in the west,
So hie away with speed my coachman lad.

We hae travelled too fast the coachman said,
Near twelve miles an hour the coachman said.
Go rub the brutes down, and take this here crown,
For *mum* is the signal my coachman lad.

(TUNE, "*The kirk's alarm*," &c.)

PROVOST OX! PROVOST OX! you'll be set in the stocks,
As sure as Kirkcaldy's in Fife;
Unless you commence to *pilfer* some sense,
And lead a less radical life.

SAUNDERS YOUR! SAUNDERS YOUR! you're a scum to be sure,
And a low one too, every one knows;
Go snatch up a quill, and scrawl out your will:—
You'll be *stretched* from the neck to the toes.

BAILLIE'S SON! BAILLIE'S SON! your *first* father's near done,
But yet he may see out your *second*;
Paint darker your face, and shun farther disgrace,
Before your *queer* lineage is reckoned.

☞ The remainder of this *beautiful* medley is postponed till another opportunity.

FINIS.

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